

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison
Company for a Permit to Construct Electrical
Facilities with Voltages Between 50 kv and
200kV: Viejo System Project

Application 03-03-043
(Filed March 21, 2003)

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

This ruling and scoping memo sets forth the scope, process, and schedule for this proceeding following a prehearing conference (PHC) before Administrative Law Judge (ALJ) Malcolm held in Mission Viejo, on March 25, 2004.

1. Project Description and Proceeding Status

Southern California Edison Company (SCE) filed this application seeking authority to construct a new 220/66/12 kilovolt (kV) substation in Lake Forest and replace 20 existing tubular steel poles with 13 four-circuit tubular steel H-frame towers along an existing right of way, mostly through the city of Mission Viejo. SCE proposes to install three 66 kV lines on the new towers, which would run adjacent to existing lattice towers along 3.1 miles of existing rights of way. The H-frame towers would be 70 to 140 feet in height. The project would also replace three 220 kV lattice steel towers with ten new tubular steel poles along the right of way.

SCE states it needs to install these facilities in order to improve system reliability in the area and reduce the possibility that the area will experience

power shortages as early as 2005. SCE seeks a “permit to construct” as that term is defined in General Order (GO) 131-D.

Commission staff has determined that the project should be reviewed under the California Environmental Quality Act and, on March 10, 2004, issued a Draft Mitigated Negative Declaration (MND) for public comment. Those comments are due April 9, 2004, for review by staff and consultants. The draft MND finds that the project would not cause any significant environmental impacts if it were to be constructed with certain specified mitigation measures.

The Commission has received letters and PHC statements opposing the project from the City of Mission Viejo (Mission Viejo) and N.O.P.E., Inc. (NOPE), a local citizens group. At the PHC, NOPE presented a petition signed by an estimated 3,000 residents of Mission Viejo. The South Orange County Regional Chambers of Commerce and the City of Lake Forest sent letters in support of the project.

The PHC held on March 25, 2004, in Mission Viejo, was attended by the applicant, attorneys representing the Mission Viejo, representatives NOPE and about 200 local residents. All five members of Mission Viejo’s city council, including the mayor, spoke in opposition to the project. About 20 citizens spoke, most in opposition to the project.

On March 26, 2004, the assigned ALJ joined a tour of the project rights of way, which was attended by representatives of SCE, NOPE and Mission Viejo. Several local residents also joined the tour.

2. Proceeding Issues

The following addresses the issues raised by SCE, Mission Viejo and NOPE.

Standard of Review in this Application: CPCN vs. PTC. SCE filed this application seeking a permit to construct or “PTC” for the Viejo system facilities. Mission Viejo raises concerns that the application should seek a CPCN, with the more elaborate review process, because the project does not anticipate “replacing existing structures with similar structures.” Mission Viejo also states concerns that SCE plans to add a fourth 66 kV line at an unspecified later date, pushing the project over the 200 kV threshold. SCE states it has no plans to add a fourth line. SCE stated that adding the fourth 66 kV line at a later date would not require any Commission review or approval.

GO 131-D requires utilities to seek a PTC if the project is designed to operate between 50 kV and 200 kV. A PTC does not require the application to include analysis of need, costs or benefits. A PTC generally anticipates an environmental review and a process for public input. GO 131-D requires utilities to seek a CPCN before construction of transmission line facilities that are designed for “immediate or eventual operation at 200 kV or more.” A CPCN application requires a showing of project need and an analysis of costs and benefits.

When considering whether a project would operate at 200 kV or more for purposes of determining whether to require a PTC or CPCN, the Commission does not add the voltage of the several circuits proposed to be installed. That is, the project is considered to operate at a level of 66 kV notwithstanding the number of installed circuits as long as all circuits are 66 kV. Because all circuits SCE proposes to install are 66 kV, the project was appropriately filed as a PTC.

GO 131-D Section III(A) excuses projects larger than 200 kV from CPCN review transmission line projects that anticipate “the replacement of existing power line facilities or supporting structures with equivalent facilities or

structures, the minor relocation of existing power line facilities, the conversion of existing overhead lines to underground, or the placing of new or additional conductors, insulators, or their accessories on or replacement of supporting structures already built...” SCE would replace existing facilities with facilities that are not “equivalent.” However, this exception is not relevant in this case because the exception applies to projects operating at levels above 200 kV and the proposed project is below 200 kV.

For these reasons, SCE’s application appropriately seeks a PTC.

EIR vs. MND. Mission Viejo and NOPE contend that the Commission should have conducted an EIR rather than an MND in this case in order to provide a complete assessment of the project and assess alternatives. These opponents to the project allege that the MND does not consider significant environmental impacts and improperly fails to consider reasonable alternatives to the facilities envisioned in the application.

Commission staff and consultants used their best judgment in determining whether the project required an EIR or an MND. It would serve no useful purpose at this point to question that judgment prior to the issuance of the final MND and Commission’s review of it. Commission staff will carefully consider the substantive comments of parties with regard to the adequacy of the mitigations proposed by the MND. Subsequently, the Commission will determine whether to certify the MND. At that time, it will consider the legal question of whether CEQA requires the development of a complete EIR for this project.

Other Environmental Issues. Mission Viejo and NOPE argue that the project’s visual impacts are substantial. They propose the Commission consider undergrounding portions of the project and present an analysis of

undergrounding about 2.5 miles of the project. Mission Viejo also argues that the Commission must consider the growth-inducing impacts of the project and does not. It also believes the MND overlooks the harmful impacts of the project with regard to the use of helicopters and rock crushers, grading and earthwork. It states the mitigations in the MND are inadequate because they require only those that are “feasible” and permit the applicant to determine the feasibility of those mitigations.

SCE argues the MND is the appropriate standard of environmental review in this case. It states that the project will not induce growth but accommodate growth that is expected in any event.

The Commission values the comments of Mission Viejo and NOPE with regard to the adequacy of the MND. I am especially interested in NOPE’s proposal to underground those portions of the project that follow the flat portions of the right of way. This proposal might be an appropriate mitigation and merits the consideration of the Commission’s staff and consultants. At this point, the appropriate procedure for review of this and other environmental issues is for parties to submit comments on the draft MND. Following receipt of their formal comments on the MND and the staff’s review of those comments, the assigned ALJ and I will consider whether the Commission should conduct hearings on these matters or proceed without hearings and draft an ex parte order for the full Commission’s consideration.

In the meantime, I encourage the parties to work together to develop mitigation measures that might accommodate the interests of SCE and the local community, and which could be incorporated in the final MND.

Need for the Project. At the PHC, NOPE and Mission Viejo stated their common concern that SCE has not demonstrated a need for the project and has conducted no cost-benefit analysis. SCE replied that it is not required to provide such analysis under GO 131-D.¹

SCE argues that the Commission does not have discretion in this case to consider issues of need, costs or benefits. It states that GO 131-D limits review of permits to construct to environmental issues.

D.94-06-014 found that the Commission's review of a project for which the utility seeks a PTC is limited to environmental impacts of the project and would not consider such issues as project need. While this decision may have stated the Commission's intent, it is generally accepted that the Commission may not bind a future Commission as to the scope of its review in an application. Moreover, Section 1708 expressly provides that the Commission may modify any order with notice and opportunity to be heard. Whether D.94-06-014 intended to bind future Commissions is unclear.

This ruling does not need to resolve the broad legal question of whether the Commission has discretion in a PTC application to consider issues other than those relating to environmental impact. I do not at this time intend to expand the scope of the proceeding to include issues related to need, costs and benefits. However, I direct SCE to respond to all reasonable requests for information in data requests proffered by Mission Viejo and NOPE. SCE shall respond to data

¹ At the PHC and in response to the ALJ's inquiry, SCE stated the California Independent System Operator (ISO) had not identified a need for this project because the Federal Energy Regulatory Commission has defined projects of this size to be "distribution" and the ISO does not analyze the need for distribution projects.

requests seeking information that is relevant or likely to lead to relevant information. Although this ruling does not expand the scope of the proceeding, information regarding costs, benefits and need meets this test. I expect SCE's responses to be timely so that discovery disputes do not unnecessarily slow the pace of the Commission's review of this application. Following review of relevant information received from SCE, Mission Viejo or NOPE may file a motion to expand the scope of the proceeding if they believe the Commission's review should include these broader issues based on SCE's discovery responses. Such a motion reviewing their request would need to provide preliminary analysis that, for example, the project is not needed or that the cost of the project exceeds related benefits. The Commission will decide on the basis of that analysis whether to expand the scope of the proceeding.

3. The Need for Hearings

The City of Mission Viejo and NOPE believe the Commission should conduct evidentiary hearings in this case. This ruling does not schedule hearings but may reconsider the need for them following receipt of SCE's amended application and the parties' response to it or in the event a party files a motion with analysis suggesting a material factual dispute that implicates the public interest.

The City of Mission Viejo and NOPE expressed interest in a public participation hearing at which local residences and businesses could present their views on the proposed project. It appears that such a hearing is not necessary at this time. More than 200 residents attended the PHC conducted on March 25 and all had an opportunity to speak. This ruling does not schedule a public participation hearing at this time because members of the local community have had an opportunity to present their concerns on the record of

the proceeding. I will consider whether to conduct public participation hearings after receiving and reviewing replies to SCE's amended application.

4. Procedural Schedule

This ruling defers consideration of whether to conduct evidentiary or public participation hearings until after receipt and review of comments to the draft MND. Assuming no additional hearings are required, the assigned ALJ expects to issue a draft decision in May, which would come before the Commission no sooner than 30 days following the draft decision's publication. If additional hearings or other procedural steps are required, they will be described and scheduled in a subsequent ruling.

5. Category of Proceeding

The Commission preliminarily determined that this is a ratesetting proceeding for which hearings may be required. The Commission invited objections to its initial categorization. No party has expressed any objection. This ruling confirms that the proceeding is ratesetting.

6. Principal Hearing Officer

In the event evidentiary hearings are required, ALJ Kim Malcolm is the designated principal hearing officer in this proceeding.

7. Service List

The service list for this proceeding is located at the Commission's Website (www.cpuc.ca.gov). Those who are not already parties, but who wish to participate in this proceeding as full parties must make their request by written motion to intervene, orally on the record during the proceeding or by sending an e-mail note to ALJ Malcolm (kim@cpuc.ca.gov).

8. Rules Governing Ex Parte Communications

This proceeding is subject to Pub. Util. Code § 1701.3(c), which means that ex parte communications are prohibited unless certain statutory requirements are met (see also, Rule 7(c)). An ex parte communication is defined as “any oral or written communication between a decision maker and a person with an interest in a matter before the Commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.” (Pub. Util. Code § 1701.1(c)(4)). Commission rules further define the terms “decision maker” and “interested person” and only off-the-record communications between these two entities are “ex parte communications.”

The law permits parties to engage in ex parte communications with decision makers if all interested parties are invited and given no less than three business days’ notice, or in the case of an individual meeting granted to any party, if all other parties are also granted individual ex parte meetings of a substantially equal period of time (Pub. Util. Code § 1701.3(c)). The law permits written ex parte communications provided that those who provide such communication to a decision maker must provide a copy the communication to each party on the same day. (Pub. Util. Code § 1701.3(c); Rule 7.) Parties must report ex parte communications as specified in Rule 7.1.

IT IS RULED that:

1. The scope of this proceeding is set forth in this ruling.
2. The tentative schedule for this proceeding is set forth in this ruling. The assigned Administrative Law Judge (ALJ) may revise this schedule as necessary for the fair and efficient management of the proceeding, consistent with this scoping memo and ruling.

3. This proceeding is categorized as ratesetting and evidentiary hearings may be necessary.

4. ALJ Kim Malcolm is the principal hearing officer in this proceeding.

5. This ratesetting proceeding is subject to Pub. Util. Code § 1701.3(c), meaning that ex parte communications are prohibited unless certain statutory requirements are met. Such communications are also governed by Rule 7(c), and must be reported, as provided in Rule 7.1.

6. SCE shall respond in a timely fashion to all reasonable discovery requests, including those seeking information about the need, costs and benefits of the proposed project.

Dated April 8, 2004, at San Francisco, California.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy
Assigned Commissioner

ATTACHMENT A

SERVICE LIST AND ELECTRONIC SERVICE PROTOCOLS

The service list for this proceeding is located at the Commission's website (www.cpuc.ca.gov). Those who are not already parties, but who wish to participate in this proceeding as full parties may make a written motion to intervene or submit an appearance form at a hearing. Those who wish to be included as parties on the service list may alternatively send their requests in an e-mail note to ALJ Malcolm (kim@cpuc.ca.gov).

To reduce the burden of service in this proceeding, the Commission will use electronic service, to the extent possible using the electronic service protocols provided in this ruling.

All individuals on the service list should provide electronic mail addresses. The Commission and other parties will assume a party consents to electronic service unless the party indicates otherwise.

Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission's Rules of Practice and Procedure.

Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, et seq., of the Commission's Rules of Practice and Procedure.

Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

1. Merge into a single electronic file the entire document to be served (e.g., title page, table of contents, text, attachments, service list).
2. Attach the document file to an electronic note.
3. In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.
4. Within the body of the note, identify the word processing program used to create the document if anything other than Microsoft Word. (Commission experience is that most recipients can readily open documents sent in Microsoft Word 6.0/95.)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (regular U.S. mail shall be the default, unless another means—such as overnight delivery—is mutually agreed upon).

Parties should exercise good judgment regarding electronic mail service, and moderate the burden of paper management for recipients. For example, if a particularly complex matrix or cost-effectiveness study with complex tables is an attachment within a document mailed electronically, and it can be reasonably foreseen that most parties will have difficulty printing the matrix or tables, the sender should also serve paper copies by U.S. mail, and indicate that in the electronic note.

Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of electronic mail addresses:

- On the "Legal Documents" bar choose "Service Lists."
- Scroll through the "Index of Service Lists" to the number for this proceeding (or click "edit," "find," type in R0010002, and click "find next").
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Parties should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur, although PDF files can be especially difficult to print out.) For the purposes of reference and/or citation (e.g., at the Final Oral Argument, if held), parties should use the pagination found in the original document.

(END OF ATTACHMENT A)

A.03-03-043 SK1/KLM/sid

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling and Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated April 8, 2004, at San Francisco, California.

KRIS KELLER

Kris Keller

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.